

Re: BWS adv. Arshee, Farwell, Maison, etc.

Paul Tomkins <ptomkins@brainwavescience.com>

Mon 1/31/2022 4:40 PM

To: Joseph Carbonaro <joe@jcarbonarolaw.com>

Joe,

I am not aware of any provision in the FRCP or EDNY local rules which stays discovery pending a 12(b)(2) and/or 12(b)(6) motion. Absent a motion to extend the Court's deadline, discovery must be completed by 2/22/22.

We are seeking to depose Dr. Maison, Dr. Farwell and Mr. Azad in the Federal claim. We will likely waive a second deposition of Farwell in the NYS matter barring any issues with time (i.e. if we can get through all required testimony in one day).

We would like to review your proposed evaluator's qualifications, process for conducting the code comparison, tri-partite NDA, etc. I reached out to them earlier today. They have promised to get back to us today (I believe they are on PST). I will keep you updated.

Paul

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Attorney Admissions: The author of this email is admitted to the New York State Supreme Court, Appellate Division (Reg. 4195632), United States Tax Court (Bar No. TP0171) and the United States Federal District Court (NDNY, Bar Roll No. 513006).

From: Joseph Carbonaro <joe@jcarbonarolaw.com>

Sent: Monday, January 31, 2022 4:12 PM

To: Paul Tomkins <ptomkins@brainwavescience.com>

Subject: Re: BWS adv. Arshee, Farwell, Maison, etc.

Paul,

He hasn't ruled on the 12b6 motion yet and it may be months before he does. Having said that, I am trying to get you deposition dates. I responded to your state court document demand a while back. There is probably a lot of overlap between the State and federal demands on both sides. I'll make another effort to get you deposition dates before the 22nd. I'd also suggest that in the event we can get the testing of Farwell vs ICognitive system done quickly, this case should settle. If not, we have to wait until he decides the motion. Please let me know if you have any problem with the expert we propose to use. From my reading of the injunction, there is no set method of selection, which I take to mean that we get to select and you get to make your objections known afterward, if you have any. That is how I surmise this to work.

Joe

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From: Paul Tomkins <ptomkins@brainwavescience.com>
Sent: Monday, January 31, 2022 3:40:21 PM
To: Joseph Carbonaro <joe@jcarbonarolaw.com>
Subject: Re: BWS adv. Arshee, Farwell, Maison, etc.

Joe,

Per Judge Cogan's Order, fact discovery on this matter closes in less than 30 days (2/22/22).

When can we expect to receive responses to our disclosure requests served more than ninety days ago (10/19/21)? You were sent reminders regarding same in November and December 2021.

We also need to schedule depositions in both the state and federal matters immediately. To date, our deposition notices and follow up emails have been ignored by your client.

Paul

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From: Joseph Carbonaro <joe@jcarbonarolaw.com>
Sent: Monday, January 31, 2022 2:22 PM
To: Paul Tomkins <ptomkins@brainwavescience.com>
Subject: BWS adv. Arshee, Farwell, Maison, etc.

Paul,

See attached document demand. I believe you supplied much of what is demanded in the State court action. The demands more specific to this case are toward the end of the document.

Joe

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